

# TOPPAS

## Standard Terms and Conditions

### I. Conclusion of contract

- The Standard Terms and Conditions shall apply for all deliveries and services. Any Terms and Conditions of the customer are herewith opposed. Our Standard Terms and Conditions shall be the sole content of the contract provided the customer/buyer does not object to them in writing within 8 days of receipt of the acknowledgement of order.
- Our offers are without engagement.
- Agreements, in particular verbal subsidiary agreements and undertakings given by our sales personnel, shall only become binding through written confirmation by our authorised agent entered in the Commercial Register.
- The documents forming part of the offer, such as photocopies, drawings, weight and dimension specifications, are only approximately authoritative, unless they are explicitly described as binding in writing. The contractor/seller retains right of ownership and copyright for quotations, drawings and other documents; they may not be made accessible to third parties without the explicit approval of the contractor/seller.

### II. Prices

- In the absence of any other agreement, prices shall apply ex works or ex warehouse. Freight charges, packaging at cost price and value-added tax at the current rate shall be charged separately.
- The contractor/seller reserves the right to raise prices for contracts with an agreed delivery period of more than 4 months, in accordance with registered increases in costs due to wage settlements or increases in materials prices. If the increase is more than 5 % of the agreed price, the customer/buyer is entitled to terminate the contract.
- Subsequent reduction of the order quantity, or subsequent reduction of the number of items in the event of an agreed part delivery, as well as the reduction of agreed call-offs is generally not admissible. If in individual cases we agree to alter the contract, unit prices shall rise, also taking account of additional set-up and starting costs.

### III. Delivery period

- Place of performance for deliveries is the registered office of the contractor/seller.
- The contractor/seller shall only be in default with his obligation to deliver, without warning by the customer/buyer, if a time determinable by the calendar has been agreed on explicitly and in writing as binding for the delivery. The warning by the customer/buyer must be given in writing.
- The delivery period begins with the dispatch of the acknowledgement of order, but not before the provision by the customer/buyer of the documents, authorisations, approvals, receipt of any agreed deposit and clarification of all details of execution of the delivery, with the reservation that the contractor/seller himself be supplied in good time. In the event of ex works sales, the period of delivery has been observed if the delivery item has left the factory by the expiry of said period, or if readiness for dispatch has been advised, insofar as the goods could not be dispatched in good time without any fault on our part.
- Acts of God, measures taken within the framework of labour disputes and unforeseen circumstances that make delivery considerably more difficult or impossible (e.g. fire, machine defects, shortage of raw materials or energy, monetary and trade or other sovereign measures, obstruction of traffic routes etc.), whereby it is of no import whether such hindrances primarily affect us or our suppliers, shall entitle us to extend the period of delivery by the duration of such hindrance and a reasonable starting time. In the event of the occurrence of such unforeseen circumstances, insofar as they substantially change the economic significance or the content of the performance, or in the event that it should subsequently prove impossible to fulfil the contract, the contract shall be adapted accordingly. Insofar as this is economically unreasonable, we shall be entitled to withdraw from the contract.
- In the event of delay, we must be given, in writing, a reasonable period of grace. After expiry of said period without results, the customer/buyer shall be able to withdraw from the defaults and performances which we have not indicated to be ready for dispatch by the expiry of the period of grace. The customer/buyer shall only be entitled to withdraw from the overall contract if the part deliveries already effected are of no interest to him whatsoever.
- If the customer/buyer should suffer damage on account of a delay caused as a result of negligence by the contractor/seller, he is entitled to demand compensation for default. For each full week of delay this shall amount to 0.5 € percent, but in all no more than 5 percent, of the value of the part of the delivery that cannot be used in time, or in accordance with the contract, as a result of the delay.

### IV. Shipment, Passing of Risk

- In the absence of special agreements, packaging, route and means of shipment shall be chosen at our discretion. Risk passes to the customer on acceptance of the goods - part shipments being admissible - by the freight forwarder or carrier or other personnel, including own personnel. In the event of dispatch using own personnel, no liability can be accepted for ordinary negligence.
- Goods reported as being ready for dispatch in accordance with the contract must be called without delay, since we are otherwise entitled to dispatch them at the expense and risk of the customer/buyer, or to store them at normal market prices.

### V. Order on Call

- For long-term agreements with continuous delivery we shall be issued with calls and special issues for approximately equal monthly delivery quantities, since we are otherwise entitled to determine delivery at our reasonably exercised discretion.
- A reasonable period must be given to deal with each call. Unless otherwise agreed, we shall grant a period of 30 days, starting from the day of the agreed call date; if this period expires, we shall be entitled, at our discretion, to invoice the goods immediately and at the same time to store them at the expense of the purchaser until they are called, or to withdraw from the contract or to claim compensation for non-performance.

### VI. Payment

- Our invoices are payable net within 30 days of date of invoice, unless otherwise agreed. From the due date on, interest in the amount of 5 % p.a. is payable on the outstanding purchase price.
- If the customer/buyer defaults on payment, we shall be entitled to claim interest on arrears in the amount of 4 % above the current base interest rate in accordance with the Euro Introduction Act. If the contractor/seller can prove that the damage caused by the default is higher, he is entitled to assert this claim. This does not affect the other rights of the contractor/seller in the event of default by the customer/buyer.
- If the customer/buyer defaults, does not honour a bill at maturity or if we should subsequently become aware of circumstances indicating a deterioration in his solvency, our entire accounts receivable shall become due immediately, notwithstanding the above terms of payment. In this case, we shall only be obliged to continue delivery if the customer/buyer offers us payment in advance. If no cash payments are offered concurrent to a delivery, we shall be entitled to claim compensation for non-performance or to withdraw from the contract.
- The offsetting or assertion of rights of retention on the basis of claims for money not recognised by us or not recognised by declaratory judgement cannot be accepted.

### VII. Retention of title

- The delivered goods shall remain our property until full payment of all claims resulting from the business connection between the customer/buyer and us. This shall also apply for future and conditional claims, and also if payments have been made towards specifically designated claims. In the event of conduct by the customer/buyer contrary to the terms of the contract, we shall be entitled to take back the purchased article(s). Neither taking back the goods nor attachment of the reserved property represent withdrawal from the contract.
- If the reserved property is handled or processed, this shall take place for us as manufacturers as defined by § 950 German Civil Code, without any obligation on our part.
- If reserved property is processed, connected or mixed with other goods, we are entitled to proportional joint ownership of the new goods in the proportion of the invoice value of the reserved property to the invoice value of the other goods and materials used. Insofar as our ownership should lapse through the mixture or connection, the rights

of ownership to the new property to which the customer/buyer is entitled in proportion to the invoice value shall be transferred to us and kept in safe custody for us free of charge.

- The sale of our reserved property by the customer/buyer may only be effected in standard business dealings under normal business conditions and only as long as the customer/buyer is not in default. A precondition for this is, however, that the claim be transferred to us in accordance with the following conditions.
- The claims by the customer/buyer arising from the resale shall be assigned to us with acceptance without objection of our Standard Terms and Conditions as defined in Section 1.
- If the reserved property is resold after connection, mixture, processing or together with other goods not supplied by us, the claim from the resale shall be assigned to us in the amount of the proportion of co-ownership.
- If the reserved property is used by the customer/buyer to fulfil a works contract or works supply contract, Section VII Par. 4 ff. applies accordingly with respect to the assignment of the claim arising from the works supply contract.
- If the value of our existing securities exceeds the sum of the secured claims by more than 20 %, we shall release securities at our discretion at the request of the customer/buyer.
- The customer/buyer is entitled to collect the claims arising from resale. This does not apply if he is in default to us or if we revoke the authorisation to collect due to a substantial deterioration of assets of which we gain knowledge.
- The customer/buyer is obliged to inform his contractual partners of such assignment insofar as this is not effected by us. He is also obliged immediately to give us the information and documents required to collect the claim - but at the latest 6 days after the request is made.
- Attachments as well as other restrictions of our rights arising from the reserved property represent the legal basis for an obligation to notify us immediately. The customer/buyer is not permitted to assign these claims any further, for example factoring.

### VIII. Performance Description, Tools

- Insofar as details are defined by DIN standards concerning design, including tolerances to be complied with, these DIN standards shall be complied with in the largest tolerance group. Deviations from the provisions of the DIN standards must be agreed on separately in writing.
- In all other respects we retain the right to deviate within the standard commercial scope.
- Thermal treatment requires explicit written agreement.
- The tools and devices manufactured for production shall remain our property, regardless of the charging of cost shares. If a storage period for the tools is required, this must be stated in writing.
- Documents of all kinds which we have provided the customer with, for example, samples, drawings and the like, shall remain our property and must not be made accessible to third parties. They must be returned to us at our request at any time, and otherwise without being asked when they are no longer required to deal with the order.

### IX. Inspection and Acceptance

- The standard inspection of external condition, that is, inspection of the correct dimensions of drawings, superficial faults and superficial cracks, as well as the random sampling of the strength of thermally treated parts, is included in the unit price. Additional inspections are subject to extra charge.
- If acceptance is agreed, or necessary on account of relevant material standards, this must be effected on our premises immediately on advice of readiness to dispatch; in such cases, any costs that may arise must be borne by the customer/buyer. If the inspection is not effected within 3 days of advice of readiness to dispatch, we are entitled to dispatch the material without any further warning, or to store it at the expense and risk of the customer. In such cases, we undertake to point out that after 2 further weeks have elapsed since advice of readiness to dispatch, acceptance is regarded as having taken place, unless non-recognisable defects should exist.

### X. Guarantee

- The customer/buyer shall inspect our goods immediately on delivery or advice of readiness to dispatch. Defects detected in the course of such an inspection must be reported in writing within 14 days of delivery or advice of readiness to dispatch. Any handling or processing that may have been started must be suspended without delay. Defects that cannot be detected even during the most careful inspection, for example after metal cutting processes, must be reported in writing immediately after they occur, but at the latest 6 months after delivery. The customer/buyer undertakes to examine the delivered goods for completeness immediately after delivery; should he detect any short shipments, he must advise the contractor/seller of this without delay, but at the latest within 8 days.
- In the event of justified, punctual, written complaint, we shall, at our discretion, take back the defective goods, rectify the defects or reimburse the reduced value. If we do not comply with these obligations, the customer/buyer is entitled to revoke the contract.
- We are entitled not to provide any guarantee for defects unless the customer/buyer places the defective goods at our disposal without delay.
- In the event of claims for compensation for damage that did not occur in the goods themselves - so-called consequential damage caused by defects - we accept liability only for intent and gross negligence. We accept no liability for unforeseeable damage. In the absence of warranted characteristics, we only accept liability insofar as such warranty serves the purpose of protecting the buyer against any consequential damage caused by defects that may have occurred.
- Additional guarantee provisions for high-level safety equipment, elevators for persons and material and load-securing equipment.
- We grant a guarantee for production or material defects for a period of 12 months from date of purchase.
- The guarantee covers the replacement or repair of parts recognised by us as being defective; no other liability is accepted.
- The equipment must be sent carriage paid to our registered office for examination of the complaint and for repair. Accompanying or subsequent damage, such as costs for dismantling and assembly, transport or downtimes, cannot be accepted by us.
- The guarantee does not cover
  - parts of external origin that were not assembled by us, for example wire cables
  - devices that were modified or repaired by the customer or third parties without our approval or whose seal is damaged
  - devices damage to which is attributable to improper handling and use.
- We can accept no responsibility in such cases.
- The equipment is for the safety of persons; it must therefore be operated and handled correctly. The equipment must be serviced and inspected every 12 months for proper functioning by us or by service agencies specially designated by us. The relevant official regulations applicable at the place of use must be properly complied with.
- Our guarantee conditions are only applicable if they are signed with legally binding effect by the customer in the manual of the device in question as well as in the guarantee certificate. After receipt of the device, the guarantee certificate must have been sent back to the contractor/seller.
- The customer recognises our guarantee conditions through his signature.
- In all cases, the manual in question must also be sent in if a guarantee claim is made.

### XI. Liability waiver, third party liability

Unless otherwise provided for in these conditions, we are liable for compensation for infringement of contractual or extra contractual obligations only in the event of intent and gross negligence, whereby this must relate to damage that can typically be expected in this concrete business. This does not apply if the customer/buyer can usually be insured, or is insured, against such damage. In all other respects, liability is limited to the amount covered by our manufacturer's liability insurance.

### XII. Place of performance and jurisdiction, applicable law

The place of performance and jurisdiction is Munich, Bavaria, Germany. German law only is applicable for all contracts.